

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 15-4268 JB

ANGEL DELEON, et al.

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court: (i) on the United States' Response in Partial Opposition to Defendants' Motion to Suspend the Scheduling Order (Doc. 250), Request for Status Conference and Ex Parte Conference with the District Court (Doc. 535), filed May 25, 2016 (Doc. 547)("Response"); and (ii) the Unopposed Motion to Waive Eugene Martinez's Presence at Hearing, filed May 26, 2016 (Doc. 554). The Defendants -- not counsel -- may seek to be excused from attending in person the hearing set for June 2, 2016. The Defendant and all counsel representing the Defendant should execute a waiver and excusal request. The Court will assume, from Plaintiff United States of America's Response, that the United States does not and will not oppose any request for excusal. The United States has also adequately explained why certain Defendants may not want to appear personally. Any Defendant seeking excusal must, however, seek and state the position of each or all Defendants. In addition, all counsel will need to certify to the Court, before any excusals are granted, that the June 2, 2016, substantive motion hearing -- involving a discovery dispute that the Court understands is very important to the Defendants -- is merely an administrative conference unrelated to any issues at trial, and is only a conference or hearing on a question of law. The parties should be advised that the Court will, at

the end of the hearing, ask whether there are any other issues that the Court needs to address or any other matters with which the Court can help the parties before the Court recesses. It seems sound that, if the Court and the parties are going to go to such great lengths to get together for the status conference that the Defendants have requested and for this motions hearing that the Court has set, the Court and the parties should maximize the use of time to discuss and decide as much as possible.

The Defendants must decide what is in their best interests. The Court is, however, skeptical that the counsel can take good notes and then explain fully what occurred at the hearing to the clients. The Court has stated elsewhere:

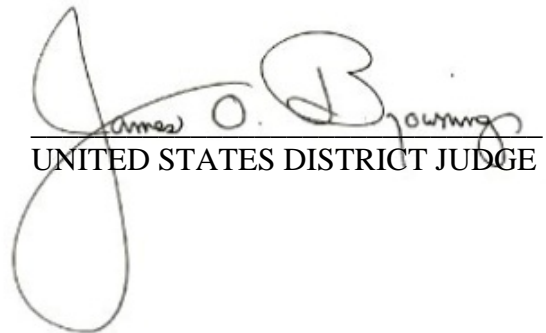
Getting the decision “right,” i.e. getting the law and facts correct and accurate, is obviously important, but getting it right is only one-half of a judge’s task, particularly a trial judge’s job. The other half of dispensing justice is the appearance of justice -- did the Court listen to the litigant’s arguments, wrestle with those arguments, and deal with them in an intellectually honest way. Americans are pretty good about accepting a judicial decision -- even an adverse one -- and cease obsessing over an issue, if they are convinced that an authority figure has dressed up, taken them seriously, listened patiently and politely, wrestled with the arguments, addressed them, and accurately stated the facts.

A.M. ex rel. Youngers v. New Mexico Dep’t. of Health, 117 F. Supp. 3d 1220, 1253 n.14 (D.N.M. 2015)(Browning, J.). The Court is hesitant to agree that the Defendants can fully appreciate whether the Court will do justice, whether the Court has the appropriate demeanor, and whether the Court will wrestle with the issues in an intellectually honest way, from listening to his or her counsel read notes at a detention facility.

Defendant Eugene Martinez is currently in Los Angeles, California, being evaluated for competency. His counsel contacted all parties, including the United States, and no party opposes Martinez waiving his appearance. A knowing, voluntary, and intelligent waiver from Martinez is

not possible at this time because of the concerns about Martinez' competency. His waiver request is granted.

IT IS ORDERED that: (i) the individual Defendants -- not their counsel -- may petition the Court to be excused from the hearing set for June 2, 2016, at 9:00 a.m., as set forth in this Memorandum Opinion and Order; and (ii) the Unopposed Motion to Waive Eugene Martinez's Presence at Hearing, filed May 26, 2016 (Doc. 554), is granted.



UNITED STATES DISTRICT JUDGE

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